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Attorneys and Counselors at Law

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FACSIMILE TRANSMISSION

Transmit to: Jay C. Paul, Esquire

Fax No.: (804) 668-5329

Date: February 5, 2020

In Re: Payne v. Payne

From: James M. Goff II, Esquire

Number of pages, including cover sheet: Twenty-Two (22)

Comment(s): Please see the attached communication.

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Attorneys and Counselors at Law

James M. Goff II, Esq.
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M. Donette Williams, Esq.
dwilliams@jamesgofflaw.com

February 5, 2020

IMMEDIATE ATTENTION REQUIRED

DELIVERED BY HAND

Wendy S. Hughes, Clerk
Chesterfield Circuit Court
9500 Courthouse Road
Post Office Box 125
Chesterfield, Virginia 23832

RE: Thomas Clifford Payne v. Cheryl Cibula Payne
Case No. CL16-2435-00

Dear Ms. Hughes:

Pursuant to Judge Robbins' request, enclosed herewith please find an Amended Motion to Rehear and Reconsider to be filed with the above referenced matter in your court.

Please present this Amended Motion to Judge Robbins at your earliest convenience, as time is of the essence to grant the Order to Stay the Final Decree entered on January 15, 2020.

As always, thank you for your generous assistance in this matter.

Very truly yours,


James M. Goff II

JMGI:mdw
Enclosure

cc: Thomas C. Payne
Jay C. Paul, Esquire

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CHESTERFIELD

THOMAS CLIFFORD PAYNE, **Plaintiff,**

v. Case No. CL16-2435-00

CHERYL CIBULA PAYNE, **Defendant.**

AMENDED MOTION TO REHEAR AND RECONSIDER

COMES NOW, the Plaintiff, Thomas Clifford Payne, by his counsel, and moves this Court to rehear and/or reconsider issues of equitable distribution and attorney's fees, respectfully stating as follows:

1. That this Court entered a Final Decree consistent with its October 23, 2019 letter opinion on January 15, 2020.

2. That counsel for the Plaintiff, James M. Goff II, Esquire, received notice by mail of the Defendant's Chapter 13 bankruptcy filing of January 31, 2020 (Exhibit A).

3. That the Defendant's bankruptcy filing will materially affect this Court's equitable distribution award as set forth in the Final Decree entered January 15, 2020.

4. That the Court's ruling was based on the evidence submitted by the parties as to the marital assets and liabilities, so that each party would receive their fair and equitable share.

5. That in said bankruptcy filing, the Defendant identified a bank account with Fort Lee Credit Union ending 0018 which was not disclosed the Plaintiff or his counsel throughout the course of litigation.

6. That the Court's in its letter ruling dated October 25, 2019, specifically noted the Defendant, "secreted finances, moved money outside the scope of the martial accounts and represented that she had only one checking account." *Page 4, Section 5; Letter Ruling dated October 25, 2019* (Exhibit B).

7. That the Defendant should be required to produce any and all information regarding this after discovered bank account to the Plaintiff to ensure all evidence was properly before the Court to determine issues of equitable distribution between the parties.

8. That your Plaintiff's has a good faith belief that the bankruptcy filing by the Defendant was initiated prior to entry of the Final Decree of divorce entered January 15, 2020, in an effort to avoid the Court's balancing of the equities between the parties in this matter.

9. That your Plaintiff is entitled to a restructuring of the marital assets and debts of the marriage. Specifically, given the now known intention of the Defendant to circumvent the Order of this Court, certain assets and debts can be applied to offset in order to obtain equity between the parties as this Court intended to in its letter ruling of October 25, 2019, incorporated into the Final Decree of divorce entered January 15, 2020.

WHEREFORE, your Plaintiff, Thomas Clifford Payne, by his counsel, prays that this Court grant a rehearing for the reasons enumerated herein, and for such other and further relief as this Court shall deem meet and necessary.

THOMAS CLIFFORD PAYNE

By: 

Counsel

James M. Goff II, Esquire
VSB No. 35439
M. Donette Williams, Esquire
VSB No. 93998
JAMES M. GOFF II, P.C.
10310 Memory Lane, Suite 2-C
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Chesterfield, Virginia 23832
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Facsimile: (804) 706-9402
jgoff@jamesgofflaw.com
www.jamesgofflaw.com

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Amended Motion to Rehear and Reconsider was sent via facsimile and mailed, first class postage prepaid, to Jay C. Paul, Esquire, P. O. Box 1193, Prince George, Virginia 23875 on this 5th day of February, 2020.


James M. Goff II

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20-30524

1. Transmittal and Payment of Claims.

2. All creditors claim timely file a proof of claim to receive any payment from the Trustee.

3. If a claim is scheduled to be received and the creditor files a claim alleging the claim is secured but does not timely object to confirmation of the Plan, the creditor may be treated as unsecured for purposes of distribution under the Plan. This paragraph does not limit the right of the creditor to enforce its claim, or the extent not covered or provided for in this case, after the claimant receives a discharge.

4. If a claim is listed in the Plan as secured and the creditor files a proof of claim alleging the claim is unsecured, the creditor will be treated as unsecured for purposes of distribution under the Plan.

5. The Trustee may object to the timely distribution of claims as secured to pay an allowed secured claim in full.

6. If relief from the automatic stay is granted on any item of claims listed in the plan, then, unless otherwise ordered by the court, all payments as to that claimant will cease, and all covered claims based on that claimant will be treated by the plan.

7. Unless otherwise ordered by the Court, the actions of the creditor's claim listed as the proof of claim controls over any contrary provisions listed in the plan.

10. Vesting of Property of the Estate. Property of the estate shall revert to the claimant upon confirmation of the Plan. Notwithstanding such vesting, the claimant(s) may not transfer, sell, mortgage, encumber, or otherwise dispose of any assets in a mortgage loan modification without approval of the Court after notice to the Trustee, any creditor who has filed a request for the assets and other creditors to the extent required by the Local Rules of this Court.

11. Impairment of Impairment. The claimant(s) shall not voluntarily lease additional independent business exceeding the cumulative total of \$5,000 principal amount during the term of this Plan, whether unsecured or secured, except upon approval of the Court after notice to the Trustee, any creditor who has filed a request for notice, and other creditors to the extent required by the Local Rules of this Court.

12. Nonexhaustive Plan Provisions

13. None of "Plans" is checked, the rest of Part 12 need not be completed or reproduced.

Date: January 31, 2021

Attest: Cheryl Glavin Payne, Clerk of the Court

By: James H. Wilson, Jr., Attorney for Debtor(s) or Debtor(s) themselves, if not represented by an attorney, who certifies that the contents of the provisions in this Chapter 13 plan are identical to those presented in the Local Form Plan, where any amendments provided are included in Part 12.

Exhibit: Copy of Debtor(s) Budget (Schedule I and J) and a Waiver of Funds Secured with Plan

Certificate of Service

I certify that on January 31, 2021, I mailed a copy of the foregoing to the creditors and parties in interest on the attached Service List.

Attest: James H. Wilson, Jr., Attorney for Debtor(s) or Debtor(s) themselves, if not represented by an attorney, who certifies that the contents of the provisions in this Chapter 13 plan are identical to those presented in the Local Form Plan, where any amendments provided are included in Part 12.

4401 East Road, Suite 300
Arlington, VA 22204
202-778-0044
Telephone No.

CERTIFICATE OF SERVICE PURSUANT TO RULE 7004

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20-30524

I hereby certify that on January 31, 2021, true copies of the foregoing Chapter 13 Plan and Related Motions were served upon the following creditor(s):

☐ by first class mail in conformity with the requirements of Rule 7004(b), Fed.R.Bankr.P., or

☐ by certified mail in conformity with the requirements of Rule 7004(b), Fed.R.Bankr.P.

Attest: James H. Wilson, Jr., Attorney for Debtor(s) or Debtor(s) themselves, if not represented by an attorney, who certifies that the contents of the provisions in this Chapter 13 plan are identical to those presented in the Local Form Plan, where any amendments provided are included in Part 12.

4401 East Road, Suite 300
Arlington, VA 22204
202-778-0044
Telephone No.

CERTIFICATE OF SERVICE PURSUANT TO RULE 7004

Page 6

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20-30524

Official Form 109
Schedule I: Your Income

1. List all your employment information.

2. List all other income you received during the year.

3. List all other income you received during the year.

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Commonwealth of Virginia

JUDGES
T.J. HAULER
FREDERICK G. ROCKWELL, III
STEVEN C. MCALLUM
LYNN S. BRICE
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MICHAEL C. ALLEN
HERBERT C. GILL, JR.
HAROLD W. BURGESS, JR.
RETIRED



COUNTY OF CHESTERFIELD
CITY OF COLONIAL HEIGHTS

JUDGES' CHAMBERS
POST OFFICE BOX 57
CHESTERFIELD, VIRGINIA 23832-0057
(804) 748-1333

TRICIA D. MULLER
ADMINISTRATOR OF JUDICIAL OPERATIONS

TWELFTH JUDICIAL CIRCUIT

October 23, 2019

James M. Goff II, Esquire
JAMES M. GOFF II, P.C.
10310 Memory lane, Suite 2-C
Chesterfield, Virginia 23832

Jay C. Paul, Esquire
P.O. Box 1193
Prince George, Virginia 23875

Re: *Thomas Clifford Payne v. Cheryl Cibula Payne*, CL16-2435

Dear Counsel:

Enclosed please find Judge Hauler's Letter Opinion for the above referenced matter.

Sincerely,

Savannah Altherr, Law Clerk to the
Honorable T.J. Hauler

Enclosure



Commonwealth of Virginia

JUDGES
T.J. HAULER
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October 23, 2019

James M. Goff II, Esquire
JAMES M. GOFF II, P.C.
10310 Memory lane, Suite 2-C
Chesterfield, Virginia 23832

Jay C. Paul, Esquire
P.O. Box 1193
Prince George, Virginia 23875

Re: *Thomas Clifford Payne v. Cheryl Cibula Payne, CL16-2435*

Dear Counsel:

This matter came before the Court on September 9, 2019 for a hearing for final argument.

After studying the testimony and exhibits submitted in this matter and reviewing the pertinent caselaw, the Court is prepared to rule on the grounds for divorce. After announcing its decision regarding the grounds for divorce, the Court will proceed to the issues of grounds, equitable distribution, custody and visitation, child support, spousal support, and attorney's fees.

PROCEDURAL BACKGROUND

Mr. Payne filed a Complaint for divorce, through counsel, on August 29, 2016 seeking a divorce *a mensa et thoro* on the grounds of desertion, with leave to merge the said divorce into a divorce *a vinculo matrimonii* at the expiration of the statutory period.

Mr. Payne also requested joint legal and primary physical custody of the parties' minor children, visitation, and equitable distribution of marital property.

Through counsel, Ms. Payne Answered and filed a Counter Complaint on September 15, 2016. She denied the Plaintiff's allegation of desertion and moved for divorce *a mensa et thoro* to merge into a divorce *a vinculo matrimonii* based on grounds of cruelty and desertion. She also requested sole custody of the minor children, child and spousal support, exclusive possession of

the marital residence, equitable distribution, attorney's fees, and that the Court enjoin and restrain the Plaintiff from dissipating marital assets.

Plaintiff Answered the Counter Complaint on September 27, 2016, denying Defendant's allegations. A *pendente lite* hearing was held on October 14, 2016 and *pendente lite* Order consistent with the ruling of the October hearing was entered on February 1, 2017. A second *pendente lite* hearing was held on April 3, 2017 and an Order consistent with the ruling from that hearing was entered on April 28, 2017. A third *pendente lite* hearing was held on September 15, 2017 and an Order consistent with the ruling from that hearing was entered on November 7, 2017. A Domestic Relations Pretrial Order was entered on June 3, 2019.

The Court heard final argument on September 9, 2019 and received and reviewed evidence via *de benne esse* depositions dated July 26, 2019, August 4, 2019, August 7, 2019, as well as the transcript and exhibits of the final hearing on September 9, 2019.

GROUND FOR DIVORCE

Plaintiff and Defendant were married on May 8, 1999 in Chesterfield, Virginia. T. Payne Dep. 4: 12-14, Aug. 4, 2019. There are two children of the marriage, Madelyn Rebecca Payne and Jenna Elizabeth JeeAH Payne. *Id.* at 5: 3-12. Madelyn, was born to the parties during the marriage on March 8, 2002. *Id.* at 5: 6-9. Jenna was born on June 20, 2008 and was adopted by the parties. *Id.* at 5:10-16. The parties last cohabited at 7901 Dunnottar Court in Chesterfield, Virginia 23838. *Id.* at 5:1-2. The parties separated on July 15, 2016.

Plaintiff and Defendant each sought divorce based on grounds of desertion. Additionally, Defendant sought divorce on alternative grounds of cruelty. The Court finds that each party failed to meet its respective burden of proof sufficient to find for a divorce based on cruelty or desertion.

With regard to fault, Defendant's counsel briefly argued recrimination. Hr'g. Tr. 4:12-18, Sept. 9, 2019. However, evidence to determine fault with regard to recrimination was insufficient for such a determination.

The Court finds that the parties presented sufficient evidence to demonstrate that the appropriate ground for divorce is living separate and apart, with no cohabitation nor interruption in excess of one year.

EQUITABLE DISTRIBUTION

I. STATUTORY FACTORS

Virginia Code § 20-107.3(E) requires the Court to weigh the following eleven factors to determine the appropriate scheme of equitable distribution:

1. The contributions, monetary and nonmonetary, of each party to the well-being of the family;

Plaintiff contributed the entirety of the family's monetary resources for all but the first four years of the 17-year marriage. C. Payne Dep. 5:18-22; 7:13-17, Aug. 7, 2019. Throughout the course of the parties' marriage, Plaintiff was employed as an electrician. Plaintiff regularly worked overtime to support the family. T. Payne Dep. 12:2-19, Aug. 4, 2019. Plaintiff also worked a part-time job during six months of 2008 when he experienced a drop in pay due to the recession. *Id.* at 12:23-25; 13:3-4. From 2009 through the time of separation, Plaintiff worked in excess of 60 hours per week. *Id.* 13:24-25. Additionally, Plaintiff worked more than 12 hours per day, six days per week at Defendant's request for him to engage in working additional overtime. *Id.* at 12:8-19, Aug. 4, 2019.

Despite working six days per week, Plaintiff spent every Sunday, his only day off, with his daughters. *Id.* 9:17-20. He spent time engaging with them in activities that each enjoyed, such as hiking with Madelyn and playing on the trampoline with Jenna. *Id.* at 9: 21-23; 10:1-5.

Defendant worked as an insurance claims adjustor during the first four years of the marriage, but not at all afterwards. C. Payne Dep. 5:18-22; 7:13-17, Aug. 7, 2019. After the birth of their first daughter, Defendant stayed home to take care of their daughter and maintain the household. *Id.* at 8:9-23. The care of the children became Defendant's primary responsibility and the parties decided to home school the children. *Id.* at 12:1-9. Defendant stated that she home schools the children between 5 and 6 hours each day. C. Payne Dep. 127:1-3.

2. The contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties;

While at home, Plaintiff maintained the marital residence by acting as a handyman carpenter. T. Payne Dep. 12:2-19, Aug. 4, 2019. Plaintiff built things and landscaped the property, for example, by creating a fish pond and a large patio for the children's toys. *Id.* at 10:6-16. Plaintiff also repaired the property himself when necessary instead of hiring a third-party contractor. *Id.* at 21:6-11. For example, Plaintiff installed a back-up generator, repaired various plumbing problems, repainted the rooms, and installed an irrigation system in the yard. *Id.* at 21:14-23.

Defendant maintained the household. C. Payne Dep. 8:9-23, Aug. 7, 2019. She also maintained the family's finances during the course of the marriage. C. Payne Dep. 13:4-7, July, 26, 2019. However, Defendant ceased paying mortgage on the marital residence during the course of the litigation, which caused the foreclosure proceedings. *Id.* at 46:1-14. Defendant claims that she did not have the money to pay the mortgage during this time period. During this time period, the mortgage payment was \$2,350 per month. C. Payne Dep. 142:10-13, Aug. 4, 2019. During this same time period, Plaintiff was paying Defendant \$3,876 per month in support. *Id.* at 143:14-18. Ultimately, Defendant's actions cost the parties the asset of the marital residence and, instead, created \$11,624.98 in debt due to defaulting on the mortgage. Pl. Ex. 2, Sep. 9, 2019.

Defendant also failed to care for certain items of marital property after she asked Plaintiff to leave the marital residence. Defendant admits to “junk[ing]” items that possibly belonged Plaintiff by allowing her father and brother to take them to the dump. C. Payne Dep. 53:15-24, August 7, 2019. Defendant did not take inventory of the items or reach out to Plaintiff’s attorney to allow Plaintiff the opportunity to retrieve the items. *Id.* at 54: 19-24. Defendant further denied Plaintiff access to the marital residence to retrieve his personal property. C. Payne Dep. 128: 5-6.

After the roof of the marital residence was damaged during a hail storm, Defendant had a contractor inspect the damage. This was assessed at \$17,800. C. Payne Dep., 175:23-25, Aug. 4, 2019. After the contractor failed to follow through with repairing the roof, Defendant chose not to contact another contractor for the repair. *Id.* at 174: 2-11. After a second hailstorm, Defendant chose not to have any additional damage assessed. *Id.* at 176: 1-4.

After separation, Defendant hired an electrician to complete \$2,700.00 worth of electrical work on the marital residence instead of asking Plaintiff, who is an electrician, to complete the work at no cost. Hr’g Tr. 45:2-17, Sep. 9, 2019. This explains the increase in the Citi card October 2016 statement. *Id.*; T. Payne Dep., Pl. Ex. 8, Aug. 4, 2019.

3. The duration of the marriage;

The couple married on May 8, 1999 and separated on July 15, 2016. The duration of the marriage was approximately 17 years and 2 months.

4. The ages and physical and mental condition of the parties;

Plaintiff is 50 years old and is in good mental and physical health, other than a diagnosis of high blood pressure. T. Payne Dep. 22:11-18, Aug. 4, 2019.

Defendant is 48 years old. C. Payne Dep. 7:23-24, July 26, 2019. Defendant testified that she has a health condition but has not sought disability for this condition. *Id.* at 8:3-14.

5. The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of subdivision A (1), (3) or (6) of § 20-91 or § 20-95;

Plaintiff presented evidence that, prior to separation, Defendant secreted finances, moved money outside the scope of the marital accounts and represented that she had only one checking account. C. Payne Dep. 37:8-21, 38:10-17, 39:7-21, 48:13-24, 70:3-16, July 26, 2019.

6. How and when specific items of such marital property were acquired;

See “Assets and Debts” discussion below.

7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities;

See "Assets and Debts" discussion below.

8. The liquid or nonliquid character of all marital property;

All assets subject to division are liquid, with the exception of the personal property and coins.

9. The tax consequences to each party;

Defendant testified that she did not file jointly and instead claimed both of the parties' minor children on her 2018 tax returns as dependents. C. Payne Dep. 110:10-15.

10. The use or expenditure of marital property by either of the parties for a nonmarital separate purpose or the dissipation of such funds, when such was done in anticipation of divorce or separation or after the last separation of the parties; and

As previously discussed, Defendant failed to pay the mortgage to the marital residence despite living there after having asked Plaintiff to leave the residence. Pl. Ex. 2, Sep. 9, 2019. Her failure to pay the mortgage cost the parties the asset of the marital residence. *Id.* This constituted waste of a marital asset.

Defendant also failed to care for certain items of marital property after she asked Plaintiff to leave the marital residence. Defendant admits to "junk[ing]" items that possibly belonged Plaintiff by allowing her father and brother to take them to the dump. C. Payne Dep. 53:15-24, August 7, 2019. Defendant did not take inventory of the items or reach out to Plaintiff's attorney to allow Plaintiff the opportunity to retrieve the items. *Id.* at 54: 19-24.

11. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

Defendant testified that did not have any money with which to make the mortgage payments for the marital residence, which resulted in foreclosure. C. Payne Dep. 115:11-13, Aug. 4, 2019. However, Plaintiff presented evidence that Defendant had a bank balance of \$44,000.00 during the time period of foreclosure. T. Payne Dep., Pl. Ex. 12, Aug. 4, 2019.

II. ASSETS AND DEBTS

"Property is presumed to be marital if it was obtained by either spouse during the marriage, and before the last separation of the parties unless evidence process that the property is separate." *Luczkovich v. Luczkovich*, 26 Va. App. 702, 715 (1998) (citing Va. Code § 20-107.3(A)(2)). If parties fail to present evidence to determine classification of an item as separate or marital property, then the statutory presumption requires the Court to classify the property as marital.

The parties have agreed that all assets held by the couple are marital, with the exception of Defendant's engagement ring. Hr'g Tr. 25:10-18, Sep. 9, 2019.

Plaintiff submitted a proposed distribution of property. Pl. Ex. 3, Sep. 9, 2019. Defendant did not submit a proposed distribution form.

The following discussion allocates the parties assets:

1. Personal Property:

This is the personal property listed in the Plaintiff's Personal Property list. T. Payne Dep., Pl. Ex. 15, Aug. 4, 2019. Plaintiff estimates that this property, minus the cost of Defendant's engagement ring, is valued at \$39,927.00. Pl. Ex. 3, Sep. 9, 2019. Defendant provided no estimate of the value of the property listed, but argued that Plaintiff's estimate was an overestimate. Hr'g Tr. 79:15-22, Sep. 9, 2019.

2. Gold & Silver Coins:

Defendant purchased gold and silver coins during the course of the marriage. C. Payne Dep. 122: 4-8, Aug. 4, 2019. She testified that these coins were all distributed to the children whenever they lost a tooth. *Id.* at 147:8-16. However, the coins were stored generally in a safe. *Id.* at 147: 24-25. Plaintiff estimated that these gold and silver coins are valued at \$10,070.00. T. Payne Dep., Pl. Ex. 16, Aug. 4, 2019. Defendant estimated that these coins are valued at "a little over \$4,000.00." Hr'g Tr. 77:19-22, Sep. 9, 2019.

3. Madelyn's Account:

Although this account is held in Madelyn's name, Plaintiff presented evidence that Defendant has transferred marital funds into this account and has used it as her own. C. Payne Dep. 39:7-21, 48:13-24, July 26, 2019. Plaintiff presented evidence that the account was valued at \$4,921.33 at separation. C. Payne Dep. 101:1-8, Aug. 7, 2019. Plaintiff presented evidence that this account is currently valued at \$6,921.29. T. Payne Dep., Pl. Ex. 9, Aug. 7, 2019. Defendant argued that this account is valued at \$4,900.00 at the date of separation. Hr'g Tr. 63:2-4, Sep. 9, 2019.

4. Wells Fargo Account 0606:

This account is the parties' joint account. Hr'g Tr. 46:14-16. Plaintiff values this account is valued at \$1,300.58. Pl. Ex. 3, Sep. 9, 2019.

5. Insurance Check:

After a storm damaged the roof of the Marital Residence, the parties' homeowner's insurance company issued a check to cover the repair of the damage. C. Payne Dep. 93:3-5, Aug. 4, 2019. The check was issued in both parties' names in the amount of \$17,884.72. C. Payne Dep. 107: 19-22; Pl. Ex. 11, Aug. 4, 2019. Defendant converted this check to her own personal use.

6. Wells Fargo Defendant's Account

Defendant testified that this is her only checking account. C. Payne Dep. 48:13-24, July 26, 2019. Plaintiff presented evidence that this account is valued at \$75,004.44. Pl. Ex. 11, Aug. 4, 2019.

7. Gerdau 401(k)

This is Plaintiff's 401(k) Retirement Savings Plan. T. Payne Dep., Pl. Ex. 3, Aug. 4, 2019. Plaintiff presented evidence that this account is valued at \$182,787.44. *Id.* at Pl. Ex. 6.

The following discussion allocates the parties' debts:

1. Citi Card:

Plaintiff submitted evidence that the balance of this credit card was \$8,699.98 at the date of valuation. Pl. Ex. 9, Aug. 4, 2019.

2. Chase Card:

Plaintiff submitted evidence that the balance of this credit card was \$12,477.21 at the date of valuation. Pl. Ex. 10, Aug. 4, 2019.

3. Default on the Mortgage of the Marital Residence:

After Defendant ceased making payments towards the mortgage of the Marital Residence, the property went into foreclosure. This resulted in a \$11,624.98 deficiency on the mortgage. Pl. Ex. 3, Sep. 9, 2019. Plaintiff requested this value to be an offset for him and a zero charge for Defendant.

4. Wells Fargo Line of Credit:

This Line of Credit is in both parties' names. T. Payne Dep., Pl. Ex. 8, Aug. 4, 2019. Plaintiff presented evidence that this line of credit has a balance of \$2,952.14. *Id.*

III. EQUITABLE DISTRIBUTION AWARD

After fully considering the evidence presented and factors of § 20-107.3 the Court distributes the parties' assets as follows:

1. Personal Property:

In recognition of Plaintiff's proposed distribution and Defendant's final arguments, the Court orders that the personal property is allocated to Defendant. The Court finds that this asset is valued at \$39,927.00.

2. Gold & Silver Coins:

In recognition of Plaintiff's proposed distribution and Defendant's final arguments, the Court orders that the gold and silver coins are allocated to Defendant. The Court finds that this asset is valued at \$10,700.

3. Madelyn's Account:

In recognition of Plaintiff's proposed distribution, the Court orders that the value of this account be allocated Defendant. The Court finds that this asset is valued at \$6,921.29.

4. Wells Fargo Account 0606:

In recognition of Plaintiff's proposed distribution, the Court orders that the value of this account be allocated to Defendant. The Court finds that this asset is valued at \$1,300.58

5. Gerdau 401(k):

In recognition of Plaintiff's proposed distribution, the Court orders that the value of this account is allocated to Plaintiff. The Court finds that this asset is valued at \$182,787.68.

After fully considering the evidence presented and factors of § 20-107.3 the Court distributes the parties' debts as follows:

1. Citi Card:

In recognition of Plaintiff's proposed distribution, the Court orders that the value of this account be allocated to Plaintiff. The Court finds that the balance of this card is valued at \$8,699.98.

2. Chase Card:

In recognition of Plaintiff's proposed distribution, the Court orders that the value of this account be allocated to Plaintiff. The Court finds that the balance of this card is valued at \$12,477.21.

3. Deficiency on the Mortgage of the Marital Residence:

In recognition of Plaintiff's proposed distribution, the Court orders that the reaming value of the deficiency on the mortgage of the Marital Residence be allocated to Plaintiff. The Court finds that the balance is valued at \$5,812.49.

4. Wells Fargo Line of Credit:

In recognition of Plaintiff's proposed distribution, the Court orders that the value of this line of credit be allocated to Plaintiff. The Court finds that the balance of this line of credit is valued at \$2,952.14.

CUSTODY AND VISITATION

There are two children of the marriage: Madelyn Rebecca Payne, born March 8, 2002, and Jenna Elizabeth JeeAH Payne, born June 20, 2008. A Pendente Lite Order concerning Custody and Visitation Order was entered by this Court on February 1, 2017 awarding joint legal custody of the parties' minor children to Plaintiff and Defendant. Defendant was awarded primary physical custody. Each party was permitted to have contact with the children by telephone at reasonable times and as the situation may warrant. Plaintiff was entitled to every other weekend visitation with both children, beginning on Fridays at 6:00 p.m. until Sundays at 6:00 p.m. Plaintiff was also entitled to one night per week visitation between 6:00 p.m. and 8:00 p.m. Should the parties be unable to agree on a specific night, the default night was ordered to be Wednesday. Plaintiff was ordered to refrain from alcohol use during the twenty-four hours prior to visitation.

The Court finds that Plaintiff and Defendant shall share joint legal custody of the children. Defendant shall have primary physical custody of the children. Visitation for the Plaintiff shall be in accordance with that outlined above.

CHILD SUPPORT

The Court holds that child support will be calculated by the statutory guidelines pursuant to Va. Code Ann. § 20-108.2. For the purposes of child support, the Court imputes an income of \$45,000 per year to Defendant. This calculation is based on her previous salary as a senior claims adjuster. C. Payne Dep. 136: 9-23, Aug. 4, 2019. Plaintiff's income, based on his 2018 paystubs, is calculated at \$118,875.70. T. Payne Dep., Pl. Ex. 4, Aug. 4, 2019. The Court Orders Mr. Goff to compute child support calculations using these figures. The support is not a unitary value. Thus, the child support calculation will change when the oldest child reaches the age of majority, such that the calculation will only be based upon supporting one child. Plaintiff will be afforded credit for all health, dental and vision insurance maintained by him for the benefit of his children.

SPOUSAL SUPPORT

Defendant requested an award of Spousal Support in Countercomplaint. In determining whether to award spousal support, the Court considered the circumstances and factors that contributed to the dissolution of the marriage. In making its determination as to a specific amount of spousal support, the Court referred to Virginia Code Section 20-107.1(E), which directs the Court to consider the following factors:

- 1. The obligations, needs, and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature**

Plaintiff's Gerdau 401(k) retirement plan is the only retirement plan between the parties.

2. The standard of living established during the marriage

During the marriage, the parties established a middle class standard of living.

3. The duration of the marriage

The Court incorporates its findings discussed above under Equitable Distribution and Spousal Support.

4. The age and physical and mental condition of the parties and any special circumstances of the family

The Court incorporates its findings discussed above under Equitable Distribution and Spousal Support.

5. The extent to which the age, physical or mental condition or special circumstances of any child of the parties would make it appropriate that a party not seek employment outside of the home

Such circumstances do not exist in this case. Defendant testified that neither child is disabled. C. Payne Dep. 8:18-21, July 26, 2019.

Defendant is currently pursuing education for a career in closed captioning. C. Payne Dep. 94: 14-17, Aug. 4, 2019. She previously earned a Bachelor's of Science in accounting. C. Payne Dep. 9:14-18. Although Defendant has been unemployed for some time, she testified that she was certified as a CPA in 1998. C. Payne Dep. 9:19-24, July 26, 2019. C. Payne Dep. 9:19-24, July 26, 2019.

6. The contributions, monetary and nonmonetary, of each party to the well-being of the family

The Court incorporates its findings discussed above under Equitable Distribution and Spousal Support.

7. The property interests of the parties, both personal, tangible and intangible

The Court incorporates its findings discussed above under Equitable Distribution and Spousal Support.

8. The provisions made with regard to the marital property under Virginia Code section 20-107.3

The Court incorporates its findings discussed above under Equitable Distribution and Spousal Support.

9. The earning capacity, including the skills, education and training of the parties and the present employment opportunities for persons possessing such earning capacity

In determining the earning capacity of a spouse, the Court must base any award on the current circumstances. *Payne v. Payne*, 5 Va. App. 359, 363 (1987). A spouse is obligated to earn as much as she reasonably can to reduce the amount of support needed. *Srinivasan v. Srinivasan*, 10 Va. App. 728, 734 (1990). The finding that a spouse is capable of earning more income than is presently reported must be based on evidence and not on speculation. *Jacobs v. Jacobs*, 219 Va. 993, 995 (1979).

Defendant testified that she was currently pursuing education for a career in closed captioning where she could earn a salary of \$40,000.00. C. Payne Dep. 169: 16-21, Aug. 4, 2019. This salary is much lower than the \$45,000.00 salary that Defendant had earned while working as a senior claims adjustor. *Id.* at 136: 9-23. Defendant testified that she was no longer pursuing a career as a senior claims adjustor because she did not want to do so. *Id.* at 167:7-15.

10. The opportunity for, ability of, and the time and costs involved for a party to acquire the appropriate education, training and employment to obtain the skills needed to enhance his or her earning ability

Defendant testified that she enrolled in an online course through Auburn University. C. Payne Dep. 131: 11-15, Aug. 4, 2019. Again, Defendant is currently pursuing education for a career that would yield much lower earning capacity than her prior earning capacity as a senior claims adjustor. C. Payne Dep. 136: 9-23, Aug. 4, 2019.

11. The decisions regarding employment, career, economics, education, and parenting arrangements made by the parties during the marriage and their effect on present and future earning potential, including the length of time one or both of the parties have been absent from the job market

After the birth of their first daughter, the parties decided that Plaintiff would work to support the family financially while Defendant would stay home with the children. C. Payne Dep. 137: 5-10, Aug. 4, 2019. Prior to this time, Defendant worked as a senior claims adjustor. *Id.* at 136: 14-23. Although Defendant has been unemployed for some time, she testified that she was certified as a CPA in 1998. C. Payne Dep. 9:19-24, July 26, 2019.

12. The extent to which either party has contributed to the attainment of education, training, career position or profession of the other party

The Court incorporates its findings discussed above under Equitable Distribution and Spousal Support.

13. Such other factors, including the tax consequences to each party and the circumstances and factors that contributed to the dissolution, specifically

including any ground for divorce, as are necessary to consider the equities between the parties.

The Court incorporates its findings discussed above under Equitable Distribution and Spousal Support.

SPOUSAL SUPPORT RULING

In examining the evidence, the Court is of the opinion that Defendant has secreted large sums of money during the course of the litigation. The Court believes that it is sufficient for meeting her needs for quite some time in the future. Plaintiff presented evidence that Defendant was not candid with the Court regarding her finances. For example, Defendant transferred money into various accounts and represented to the Court that she had only one checking account. C. Payne Dep. 37:8-21, 38:10-17, 39:7-21, 48:13-24, 70:3-16, July 26, 2019.

Further, Defendant failed to diligently seek employment because she testified that she was "extremely busy" and had not "had an opportunity." C. Payne Dep. 19:12-15. She also admitted that she had not prepared a resume with which to pursue employment despite having been separated from Plaintiff for 3 years. *Id.* at 20:2-4. However, Defendant testified that she has gone tanning between 100 and 150 days during the approximately 1,000 days since separation. C. Payne Dep. 96:12-23, Aug. 7, 2019. Defendant previously testified that out of approximately the 1,000 days since separation, she could not find time to compile a resume. C. Payne Dep. 20:13-17, July 26, 2019.

The Court therefore declines to grant spousal support at this time. However, the Court does grant Defendant a reservation of Spousal Support.

ATTORNEY'S FEES RULING

"[An] award for attorney's fees in a divorce matter is left to the sound discretion of the trial court." *Rinaldi v. Rinaldi*, 53 Va. App. 61, 78 (2008). After consideration of factors, including reasonableness of services rendered and evidence of time expended by counsel, the Court grants Plaintiff's request for attorney's fees in the amount of \$57,000.

PREPARATION OF DECREE

The Court directs Mr. Goff, counsel for the Plaintiff to draft a Final Decree consistent with its ruling, forward the same to Mr. Paul for his endorsement, who will submit the fully endorsed decree to the Court within 30 days of the date of this letter.

Sincerely,


Hon. J. S. Hauler, Judge

Payne v. Payne: Equitable Distribution

Assets

Real & Personal Property

Personal Property

Gold & Silver Coins

Accounts & Proceeds

Maddie's Account

Wells Fargo Account 0606

Insurance Check

Wells Fargo W's Account

Gerdau 401(k)

Value

\$39,927.00

\$10,070.00

\$6,921.29

\$1,300.58

\$17,884.72

\$75,004.44

\$182,787.68

Total Assets

\$333,895.71

To Wife

\$151,108.03

To Husband

\$182,787.68

Distribution

To Wife

To Wife

To Wife

To Wife

To Wife

To Wife

To Husband

Debts

Citi Card

Chase Card

\$11624.98 Deficiency on the Mortgage

Wells Fargo Line of Credit

(\$8,699.98)

(\$12,477.21)

(\$5,812.49)

(\$2,952.14)

Total Debt

(\$29,941.82)

To Wife

\$0.00

To Husband

(\$29,941.82)

To Husband

To Husband

To Husband

To Husband

To Husband

Grand Total

To Husband

\$152,845.86

To Wife

\$151,108.03

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JAMES M. BOFF II Jay C Paul

02/22/2022